IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 71

DAVID EARL GUTKNECHT,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONER

MICHAEL E. TIGAR
School of Law
University of California,
Los Angeles
Los Angeles, California 90024

MELVIN L. WULF
156 Fifth Ave.
New York, New York 10010

CHESTER BRUVOLD
625—2d Ave. South
Minneapolis, Minn. 55402

Attorneys for Petitioner

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REPLY BRIEF FOR PETITIONER*

The Attorney General's brief makes a predictable response to most of the arguments contained in petitioner's opening brief. Some of petitioner's arguments, such as that at pp. 61-63, concerning the interpretation of the term "duty" in the selective service regulations, the Attorney General does not directly answer. Most of the issues in this case are, however, well-framed by the briefs for oral argument. This reply brief attempts only to clarify some misimpressions concerning selective service law and practice which might be generated by the Attorney General's brief.

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* Counsel respectfully request that this brief be considered applicable to the companion case of *Breen* v. *Selective Service*, No. 65.

The Order of Call

In his brief in *Breen,* No. 65, the Attorney General distinguishes *Breen,* from *Oestereich* v. *Selective Service Board,* 393 U.S. 233 (1969), by noting that in *Oestereich* the petitioner lost an "exemption," while in *Breen,* a "deferment" is at issue. This distinction is shown to be meaningless in petitioners' opening briefs in this case and in *Breen.*

The Attorney General, by similar reasoning, concludes that petitioner suffered no harm which the law can take note of when he was moved up from the place which he occupied in the order of call from among those who were I-A to the top of the priority list as a "delinquent." Gov't Brief, pp. 23-32. Since it is conceded that petitioner was inducted sooner than he would otherwise have been, *id.* at 26, and since (as pointed out in petitioner's opening brief) petitioner might in the meantime have acquired a deferrable or exempt status, the Attorney General's point appears to be without merit. He does, however, insist upon it, and it bears noting, therefore, that the view of the federal courts has been that the "order of call" provisions of 32 C.F.R. §1631.7 are so important that if the registrant can establish that he has been called out of turn, his induction order is void. See *United States* v. *Lott,* 1 S.S.L.R. 3244, No. 1921—Criminal (C.D. Calif. Oct. 9, 1969); *United States* v. *Garcia-Miranda,* 1 S.S.L.R. 3249, Criminal 73-67 (D.P.R. Nov. 18, 1968); *Fore* v. *United States,* 395 F.2d 548 (10th Cir. 1968); *Baker* v. *United States,* No. 24024 (9th Cir. Sept. 17, 1969). See also *United States ex rel. Lynn* v. *Downer,* 140 F.2d 397 (2d Cir. 1944); *United States* v. *Smith,* 1 S.S.L.R. 3146, No.

41674 (N.D. Calif. May 22, 1968); *Yates* v. *United States*, 404 F.2d 462 (1st Cir. 1968), *reh. denied* 407 F.2d 50 (1969).

The only difference of view between courts is on the question whether the registrant or the government has the burden of going forward and the risk of nonpersuasion on the issue. Compare *Yates, supra,* with *United States* v. *Sandbank,* 403 F.2d 38 (2d Cir. 1968), *cert. denied,* 89 S. Ct. 1301 (1969).

Could Petitioner Have Had a Hearing Before the Board? Was He Prejudiced by Not Having Had One?

The government blandly asserts, p. 62, that petitioner could have had a hearing before the board on his alleged delinquency if he had asked for it. It goes so far as to fault petitioner for failing to request a hearing, p. 63. 32 C.F.R. §1642.14 deals with the hearing rights of registrants made delinquent by their local boards, and a fair reading of its language excludes the possibility of a hearing being granted as a matter of right to a registrant who is already in Class I-A at the time of delinquency declaration. Nowhere in the Selective Service regulations is a hearing provided for in such a case. Moreover, the government does not call the Court's attention to, nor is counsel aware of, any advisory opinion or order of any responsible Selective Service official requiring a hearing in such a case. If in the future local boards are directed, by regulation promulgated in accordance with 5 U.S.C. §552, to accord registrants in petitioner's circumstance a due process hearing, a different case than the one now before the Court will be presented.

Moreover, there was in this case no notice to petitioner of his supposed right; therefore, the "waiver" which the government would have the Court find to have taken place can by no stretch of the imagination be said to have been effective. See *Fay* v. *Noia,* 372 U.S. 391 (1963); *Johnson* v. *Zerbst,* 304 U.S. 458 (1938).

The question of prejudice from denial of a hearing is settled by *Simmons* v. *United States,* 348 U.S. 397, 406 (1955), also a selective service case, in which Mr. Justice Clark wrote for the majority: "Petitioner has been deprived of the fair hearing required by the Act, a fundamental safeguard, and he need not specify the precise manner in which he would have used this right—and how such use would have aided his cause—in order to complain of the deprivation."

Reliance on the Unconstitutional Hershey Directive

The Attorney General notes the view of the courts below that the local board in this case acted to cause petitioner's precipitate induction solely upon the basis of his failure to possess his selective service certificates, and not on the basis of the Hershey directive to reclassify demonstrators. Both courts below, in making their findings, ignored a leading selective service decision of this Court: *Sicurella* v. *United States,* 348 U.S. 385 (1955). In *Sicurella,* the Department of Justice had recommended against granting the registrant's application for conscientious objector status, based upon a legal premise which this Court found to be erroneous. This Court held "that this error of law by the Department, to which the Appeal Board might naturally look for guidance on such questions, must vitiate

the entire proceedings at least where it is not clear that the Board relied upon some legitimate ground. Here, where it is impossible to determine on exactly what grounds the Appeal Board decided, the integrity of the Selective Service System demands, at least, that the Government not recommend illegal grounds." 348 U.S. at 392. In this case, the board held no hearing, took no testimony, made no record, and had before it both the fact that the registrant "participated in a demonstration" and that he turned in his "draft cards." App., pp. 42-43. Under these circumstances, and having as well the memorandum of General Hershey (Appendix B to Petitioner's Opening Brief) "to which the . . . Board might naturally look for guidance," *Sicurella* requires reversal if the Court concludes that the Hershey memorandum is unconstitutionally vague and broad. See *Nat'l Student Ass'n* v. *Hershey,* 412 F.2d 1103 (D.C. Cir. 1969).

Conscription as the "Raising of Armies," and Delinquency as a Means to That End

The central thrust of the Attorney General's brief, expressed explicitly at several points and basic to his argument, is that the system of conscription is part of a Congressional design to raise and maintain an army, and that the position adopted in petitioner's brief would undermine the Congressional design. *E.g.,* pp. 48-49. Corollaries of this argument include the assertion that the delinquency power is necessary to deal with the rising tide of dissent from the government's war policy, *id.,* and that petitioner has suffered no legal harm the law need take notice of.

It is fitting that in support of his argument, the Attorney General should cite authorities which reflect a now-

discredited view of the administrative process and of administrative imposition of sanctions. At pages 60-61 of his brief, he relies upon the following cases: *Milwaukee Publishing Co.* v. *Burleson,* 255 U.S. 407 (1921), the dissenting opinions in which were adopted by this Court in *Hannegan* v. *Esquire, Inc.,* 327 U.S. 146 (1946), and *Lamont* v. *Postmaster General,* 381 U.S. 301 (1965); *Adler* v. *Board of Education,* 342 U.S. 485 (1952), disapproved in *Keyishian* v. *Board of Regents,* 385 U.S. 589, 595 (1967), a number of public employment and licensing cases, *e.g., Garner* v. *Los Angeles Board,* 341 U.S. 716 (1951); *Barsky* v. *Board of Regents,* 347 U.S. 442 (1954), the rationales of which are seriously undercut by, *e.g., Sherbert* v. *Verner,* 374 U.S. 398 (1963), *Spevack* v. *Klein,* 385 U.S. 511 (1967), and *Cramp* v. *Board of Public Instr.,* 368 U.S. 278 (1961). See also *United States* v. *Brown,* 381 U.S. 437 (1965); Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law,* 81 Harv. L. Rev. 1439 (1968).

The inappositeness of his reliance on these authorities to one side, the Attorney General is caught between the necessity of arguing the efficacy of the delinquency power and the equally strong need to disaffirm that the delinquency power is used to punish registrants. Much of his argument in this connection is premised upon the regard in which military service is held, negating, so it is argued, the proposition that military service could be punishment. This argument was anticipated to a great extent in petitioner's opening brief, and answered there. It should be noted, though, that the question whether conscripting a man into military service as a consequence of violation of regulations is "punishment" must be answered not from

the public's perception of the soldier's status, but from the registrant's standpoint. The government cannot pre-empt individual choice as to which means of confinement--military service or the possibility of imprisonment for violation of law—is preferable and justify this pre-emption based on its view of the more desirable alternative. This was the rationale which formed the rule of *Lynch* v. *Overholser,* 369 U.S. 705 (1961). *Lynch* held that the government could not enter a plea of not guilty by reason of insanity on behalf of a misdemeanor defendant in order to obtain for him the commitment to a mental hospital which it asserted was in his and society's interest. See generally Morris, *Persons and Punishment,* 52 The Monist 475 (1968). Moreover, the government's own characterization of the delinquency power as coercive, a "club," should lead one to doubt its assertions. And the government's justification for the delinquency power on the ground that it frees the criminal courts from having to try violators of the regulations comes perilously close to conceding the point altogether that the invocation of the delinquency power on the facts of this case is punishment.

Furthermore, the Attorney General's assertion that the speedy and efficient remedy of delinquency inductions is necessary in light of the increased opposition to the war and the draft is a statement of purported fact which is self-justifying and self-fulfilling. As long ago as 1966, a perceptive reporter noted that the "almost universal dissatisfaction" with the draft laws was a powerful stimulus to such opposition.[1] The high-handed behavior of local boards, operating under a roving commission to find and summarily deal with antidraft activity, must heighten that

[1] Quoted in Comment, 54 Calif. L. Rev. 2123, 2125 n. 6 (1966).

sense of unfairness and lead in turn to even greater supposed need to depart from traditional due process guarantees in checking registrants' activities.

The government also seeks to avoid the force of petitioner's argument by stating that a local board would abuse its discretion if it refused to remit a delinquency declaration upon the registrant bringing himself into compliance with the law. As noted in petitioner's opening brief, there was once a standard in the regulations whereby delinquency status was to be terminated. See p. 22. Today, however, no such standard exists, and the Attorney General lacks the power to promulgate a regulation setting up such a standard and to enforce compliance with his views in any other way. The Selective Service System, as an independent agency, is not bound by his concession. Perhaps if such a regulation is at some future time issued, the Court can reach the issue. In an appendix to this brief, petitioner reproduces correspondence between attorneys for a registrant and the Selective Service System which indicates that the interpretation of the delinquency regulations is at best uncertain. It seems appropriate, petitioner submits, to confront the delinquency regulations on their face, as the unconfined and vagrant arrogation of power they surely represent.

Finally, there is a more fundamental objection to the Attorney General's position. Under the Selective Draft Law of 1917, and even under the Selective Training and Service Act of 1940 as applied during the wartime emergency, the objective of total national mobilization was foremost in the minds of Congress, the courts and those charged with administering the statutory scheme. The institution of peacetime conscription has, since 1948, given the Selec-

tive Service System a central responsibility in the direction of the national economy.[2] Operating to some extent on the basis of Congressionally-determined priorities (*e.g.*, the conscientious objector, public official, ministerial and undergraduate student classifications and the order of call provisions), but to a very much more significant extent upon the basis of local board discretion (*e.g.*, occupational deferments, see Local Board Memorandum No. 95, reprinted at Sel. Serv. L. Rep. 2200:5) and administrative fiat (see Appendix B to petitioner's brief), the System is charged with determining which young men shall serve and which shall not.[3] We do not, that is, have a system of universal liability such as would exist if the names of all young men between the ages of 18 and 35 were placed in a hat and drawings were regularly held. In such a case, the job of courts would be limited to making sure that the names of all young men went in the hat and that the person drawing had his blindfold securely fastened. The "selective" character of the conscription system, deliberately emphasized in the 1967 re-enactment and amendment of the act,[4] requires that conscious choices be made as to whose civilian function is sufficiently important to exclude him from the ranks of those who must wear the uniform and risk death in battle. The Selective Service System is, therefore, no different analytically from the Federal Power Commission or the

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[2] See Hershey, Evaluation of the Selective Service Program, Special Monograph No. 18, Vol. 1 (1956); Tigar & Zweben, Selective Service: Some Certain Problems, 37 Geo. Wash. L. Rev. 510 (1969), at 510.

[3] See Nat'l Advisory Comm'n on Selective Service, In Pursuit of Equity: Who Serves When Not All Serve? (1967).

[4] Civilian Advisory Panel on Manpower Procurement, Report to Committee on Armed Services, 90th Cong., 1st Sess., at 10 (Comm. Print 1967).

Federal Communications Commission, both of which are also charged with the duty of regulating some sector of the national economy in the "public interest." (An important difference is that the resource being managed by the System is the precious and human one of America's young men.) And while the decisions of these agencies are given great deference by the courts, that deference is accorded only when the means by which decision is reached is reliable and provides for all relevant claims to be fairly considered. See, *e.g., Office of Communication of United Church of Christ* v. *FCC,* 359 F.2d 994 (D.C. Cir. 1966); *Scenic Hudson Preservation Conference* v. *FPC,* 354 F.2d 608 (2d Cir. 1965), *cert. denied,* 384 U.S. 941 (1966).

This view of the System as a regulatory agency bound to observe the same basic principles which govern those who administer natural gas or the broadcast spectrum, finds echo in the statutory command that the System shall be "fair and just." Military Selective Service Act of 1967, §1.

CONCLUSION

For the foregoing reasons, and those set out in petitioner's opening brief, the conviction should be reversed.

Respectfully submitted,*

MICHAEL E. TIGAR
School of Law
University of California,
Los Angeles
Los Angeles, California 90024

MELVIN L. WULF
156 Fifth Ave.
New York, New York 10010

CHESTER BRUVOLD
625—2d Ave. South
Minneapolis, Minn. 55402

Attorneys for Petitioner

November 1969

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* Counsel gratefully acknowledge the research assistance of Jeffrey B. Kupers, a third-year student at the School of Law, University of California, Los Angeles.

APPENDIX

APPENDIX

APPENDIX

[Letterhead omitted]

March 4, 1969

Lt. Col. Thomas L. Jensen
State Director of Selective Service
USMC Federal Bldg.
Sacramento, California 95814

Re: Warshaw, Paul R.
SS No. 4 60 44 80

Dear Col. Jensen:

I represent the above-named registrant.

In August of 1967, Mr. Warshaw filed as a conscientious objector with his local board. He was subsequently ordered to report for an Armed Forces Physical Examination on July 31, 1967. On August 15, 1967 Mr. Warshaw was declared delinquent for "refusal to cooperate" during that physical, having been ejected from the examining station for distributing leaflets. He was ejected despite the fact that he did not disrupt the activities of the station and despite his stated willingness to complete the examination. In a letter to his local board after being declared delinquent, he restated that willingness. At this time Mr. Warshaw is under an order to report for induction as a delinquent, but has asked that his induction be transferred to New York.

Leaving aside the questionable circumstances leading to his being declared delinquent, Mr. Warshaw has repeatedly made clear his willingness to cure his delinquency by taking another physical examination. In view of the provisions for removal from delinquency in §1642.4(c) of the Regula-

tions, his retention in delinquency status is wholly arbitrary.

On January 30, 1968 Mr. Warshaw appeared before his board to discuss his conscientious objector claim. He also completed SSS Form No. 151, volunteering for civilian work as proof of the sincerity of his claim. At the appearance, the board questioned him continuously about his delinquency only touching on his conscientious objector claim when Mr. Warshaw asked a member of the board if he had heard of the *Seeger* decision. His claim was thereafter rejected both by the local board and appeal board. There is no evidence within the file to support this rejection. The board's concern at the meeting, with the cause of his delinquency, rather than with his conscientious objector claim caused Mr. Warshaw's claim to be given less than due consideration. His delinquency may, from Mr. Warshaw's account of the meeting, have even prejudiced his claim. A registrant cannot be deprived of an exemption "because of conduct or activities unrelated to the merits of granting or continuing that exemption." *Oestereich* v. *Selective Service*, 1 SSLR 3215, 3216, —— U.S. —— (U.S.S.C. 1968).

Finally, Mr. Warshaw has made repeated requests in writing that he be given an interview with the medical advisor pursuant to §1628.2(b). These requests have been totally ignored, a clear violation of the regulations.

Therefore, on the basis of the aforementioned facts may I request the intervention of your office to consider removing Mr. Warshaw from delinquency status and to insure that his other procedural rights are observed.

Very truly yours,

Alan H. Levine
Staff Counsel

AHL:ig

[Letterhead of California Headquarters,
Selective Service System, omitted]

April 30, 1969

Mr. Alan H. Levine
Staff Counsel
New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Subject: Warshaw, Paul Rod
SS No. 4 60 44 80

Dear Sir:

This is to acknowledge receipt of your letters, dated March 4, 1969, and April 7, 1969, regarding the status of the above-named registrant with the Selective Service System.

A review of the registrant's selective service file discloses that he has been afforded all due process under the law, and this Headquarters can find no basis to justify intervention in the case.

The registrant's local board, on February 14, 1969, mailed him an order to report for induction on February 26, 1969. We presume the registrant has requested transfer for induction through the local board nearest his present place of residence. If the registrant is of the opinion that he has a physical condition that would render him unac-

ceptable for service in the armed forces, he should be advised to obtain verification of his physical condition and take such a statement with him when he reports for induction.

For the State Director

/s/ R. A. Scott
R. A. Scott
Major, USAF
Chief, Classification Section

cc: Local Board No. 60

[Letterhead omitted]

May 13, 1969

Major R. A. Scott, USAF
Chief, Classification Section
California Headquarters of the Selective Service System
Federal Building
801 I St.
Sacramento, Calif. 95814

Re: Warshaw, Paul Rod
SS No. 4 60 4480

Dear Major Scott:

Pursuant to our telephone conversation of last week and our prior correspondence concerning the above named registrant, this office hereby requests that Mr. Warshaw be permitted to remove himself from delinquent status by submitting to a new physical examination. We understand that such removal would constitute an immediate cancellation of his now outstanding order to report for induction here in New York on May 21, 1969, inasmuch as delinquents are to be inducted prior to other registrants and are therefore removed from the order of call. (32 C.F.R. 1631.7)

It is our understanding that Selective Service regulations 1642.2, 1642.4(c) provide for the continuing duty of a registrant to cure his delinquency and the power of his legal board to remove him therefrom. To deprive a registrant from the protection of these regulations would render them nugatory. The delinquency regulations are directed towards compliance and not punishment. See *Oesterich* v. *Local Board,* 37 U.S.L.W. 4053.

Furthermore, it is our belief that Mr. Warshaw's local board may have been influenced adversely to his claim of conscientious objection, by his delinquency. He maintains that the merits of his claim were never reached, the board being inordinately preoccupied with the reasons for his delinquency.

Mr. Warshaw is prepared at this time to purge his delinquency and comply with the dictates of the Selective Service System in this regard.

As his induction is scheduled for May 21, I trust an immediate reply will be forthcoming.

Very truly yours,

Edwin J. Oppenheimer
Program Coordinator
Selective Service and
Military Law Panel

[Letterhead of California Headquarters, Selective Service System, omitted]

June 4, 1969

Mr. Edwin J. Oppenheimer
New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Subject: WARSHAW, Paul Rod
SS No. 4 60 44 80

Dear Sir:

This Headquarters has again reviewed the circumstances in the case of the above-named registrant, as requested in your letter of May 13, 1969. Our position remains the same as outlined in our letter, dated April 30, 1969, to Mr. Alan H. Levine.

We are, therefore, returning the registrant's file to his local board with a copy of your letter, for the local board's review.

This Headquarters can find no basis to justify further intervention in the case.

For the State Director

/s/ R. A. SCOTT
R. A. Scott
Major, USAF
Chief, Classification Section

cc: Local Board No. 60

[Letterhead omitted]

June 10, 1969

Local Board No. 60
Community Bank Building
111 West St. John's Street
Room 200
San Jose, California

Re: WARSHAW, PAUL R.
SS No. 4 60 44 80

Dear Sirs:

Be advised that the above named registrant is represented by attorneys in this office.

Mr. Warshaw remains, as previously stated, desirous to cure his delinquency status and avoid his impending priority induction.

Please schedule him for a new pre-induction physical examination and cancel his now outstanding order for induction. The curing of delinquency is of course provided for under SS Reg. 1642.4(c). To prevent Mr. Warshaw from curing his delinquency would be wholly arbitrary as delinquency is directed at compliance with the dictates of the Selective Service System and not punishment. See *Oestereich* v. *Selective Service* 1 SSLR 3215 (U.S.S.C. 1968).

It is therefore urged that the requests outlined in our letters of March 4 and May 13 to Maj. R. A. Scott of your State Headquarters be complied with.

We trust an immediate response will be forthcoming.

Very truly yours,

Edwin Oppenheimer
Program Coordinator
Selective Service and Military
Law Panel

cc: Maj. R. A. Scott

SELECTIVE SERVICE SYSTEM

Local Board No. 60
Community Bank Bldg., Rm. 200
111 West St. John Street
San Jose, California 95113

June 16, 1969

New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Attention: Edwin Oppenheimer, Program Coordinator
Selective Service and Military Law Panel

Subject: WARSHAW, PAUL ROD
SS No. 4-60-44-80

This will acknowledge receipt of your letter of June 10, 1969, regarding the classification of the above-named registrant.

The information contained therein has been considered by this Board and it is of the opinion that the facts presented do not warrant the reopening of the registrant's classification.

BY DIRECTION OF THE LOCAL BOARD

/s/ MARY JO STODDARD
Mary Jo Stoddard, Exec. Sec.
(Local Board Clerk)

The registrant is scheduled for delinquent induction on June 25, 1969 and has been instructed to report as ordered.

[Letterhead omitted]

June 20, 1969

Lt. Col. Roy R. Bartlett
Assistant General Counsel
National Headquarters of Selective Service
1724 "F" Street N.W.
Washington, D.C.

Re: Paul R. Warshaw
SS No.: 4 60 44 80

Dear Colonel Bartlett:

Pursuant to our telephone conversation of Wednesday, June 18th, I am herewith writing you concerning the above named registrant who has been declared delinquent by his local board for alleged noncooperation during a pre-induction physical examination on July 31, 1967. Mr. Warshaw is represented by attorneys affiliated with this office.

I am herein enclosing copies of correspondence between staff counsel, myself and the California State Director's Office as well as the registrant's local board.

The circumstances surrounding Mr. Warshaw's delinquency are reiterated therein.

Mr. Warshaw has, since the time he was declared delinquent, attempted to cure his delinquency pursuant to the instructions on SSS Form 304 (Delinquency Notice):

"2. You are hereby directed to report to this Local Board immediately in person or by mail, or to take
or this notice to the Local Board nearest you *for advice as to what you should do.*" (emphasis added)

This instruction, coupled with the provisions of SS Regulation 1642.4(c), ["A registrant who has been declared to be a delinquent may be *removed* from that status *at any time*" (emphasis added)], clearly indicated that the delinquency provisions are directed towards compliance and not punitive induction.

> "The delinquency regulations are designed as an administrative means of insuring that the registrant complies with the duties he personally owes the Selective Service System . . . these regulations are basically remedial rather then punitive in nature. Indeed the primary purpose of delinquency is to bring the registrant back into compliance with his duties." *Brief of the Solicitor General in Oesterich v. Selective Service, April 1968, October Term.*

For Mr. Warshaw's local board to persist in continuing his delinquency despite both his and our numerous attempts for him to be allowed to purge his delinquency is clearly arbitrary. Such action renders both 1642.4(c) ineffectual and flys in the face of the Government's position with regard to delinquency as stated in the Solicitor General's brief, supra.

The interest of the Selective Service System in retaining Mr. Warshaw in delinquent status, with implies a violation of federal law, despite his earnest desire to remove himself therefrom cannot be so great. Even General Hershey in his letter of October 1967 recognized that registrants who commit acts which lead to their being declared delinquent may be "misguided".

Mr. Warshaw is under an order to report for priority induction as a delinquent. He is and has been most desirous to cure his delinquency.

We hope that this can be effected.

Very truly yours,

Edwin J. Oppenheimer, Jr.
Program Coordinator
Selective Service and Military
Law Panel

EJO:eh
Encs.

Office of the Director
National Headquarters
SELECTIVE SERVICE SYSTEM
1724 F Street NW.
Washington, D. C. 20435

Jul 24 1969

Mr. Edwin J. Oppenheimer, Jr.
New York Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Subject: WARSHAW, Paul R.
SS No. 4-60-44-80

Dear Mr. Oppenheimer:

This is in reply to your letter dated June 20, 1969, regarding the case of the above-named registrant. Following the receipt of your letter, the registrant's file was secured and has been reviewed by our office.

Our examination of the cover sheet disclosed that this registrant was declared a delinquent by his local board for his refusal to cooperate during an Armed Forces Physical Examination on July 31, 1967. His refusal to cooperate consisted of a refusal to obey the orders of the examining station personnel to desist from conduct regarded as disruptive of the physical examination processing of this registrant and other registrants who were present for physical examinations. In a letter to the local board dated August 27, 1967, the registrant described in detail his activities in passing out anti-draft leaflets at the examining station after and despite requests by the examining station personnel

that he refrain from doing so. In this same letter the registrant states that in any future physical examinations he will hand out leaflets as before since this is his legal right.

Under section 1642.4 of the Selective Service Regulations, the declaration of delinquency status and the removal therefrom is a matter for determination by the registrant's local board. In this case, in view of the registrant's stated intention to persist in the course of conduct because of which he was first declared a delinquent, we do not find that the local board's refusal to remove the delinquency is in any way arbitrary or capricious.

The Manpower Division of this Headquarters has been requested to review the cover sheet to determine if there is a basis in fact for denial of the registrant's claim of conscientious objections.

For The Director,

/s/ Roy R. Bartlett
Roy R. Bartlett
Lt. Colonel, JAGC
Associate General Counsel